

## Performance-Based Contracting Reporting Plan

### What information should we plan to collect?

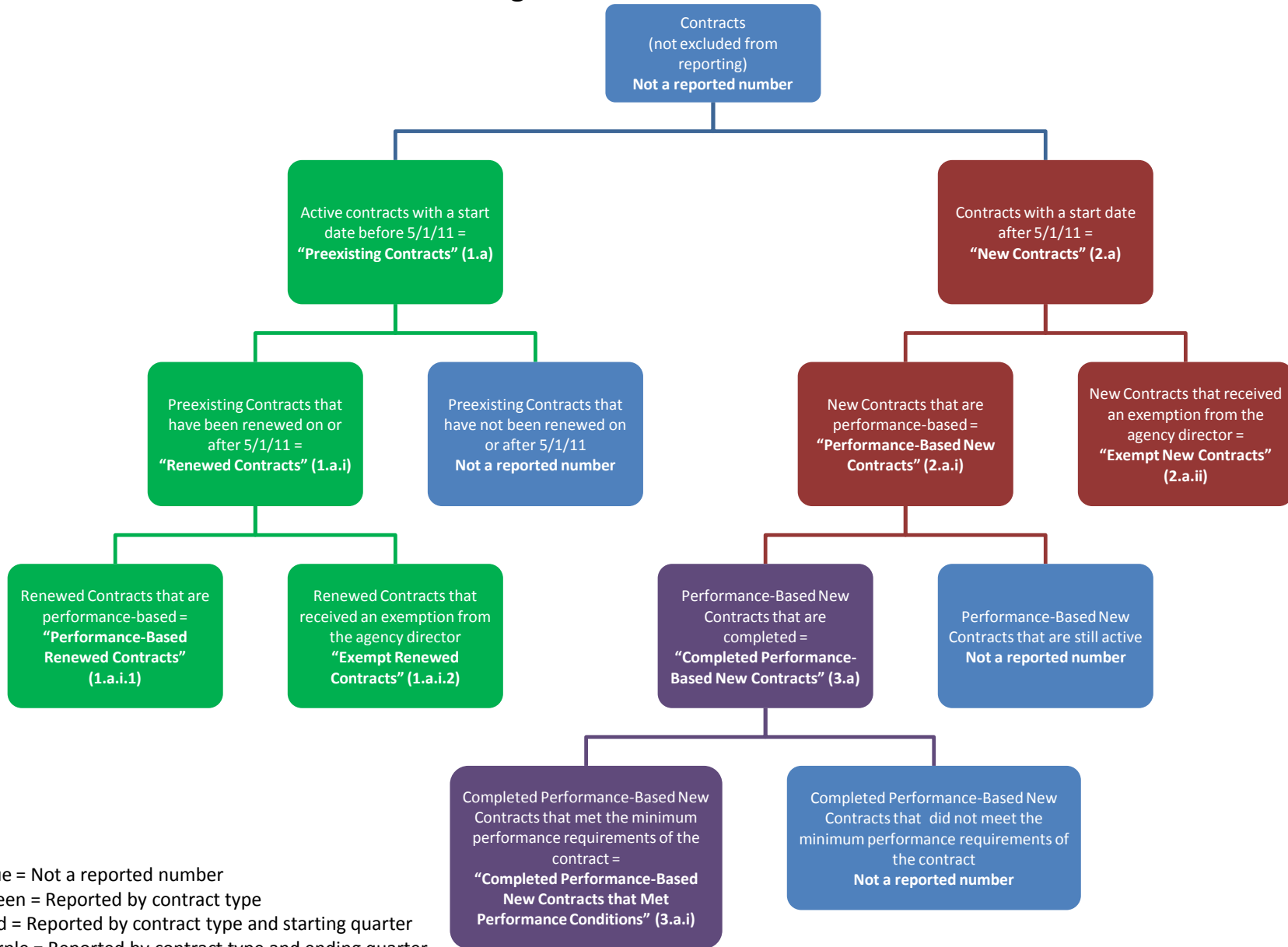
1. Preexisting and Renewed Contracts
  - a. **Preexisting Contracts** - Number of active contracts with start dates before 5/1/11, by type of contract.<sup>1</sup> (This number will slowly decline over time as the contracts expire.)
    - i. **Renewed Contracts** - Number of preexisting contracts that were renewed after 5/1/11.
      1. **Performance-Based Renewed Contracts** - Number of renewed contracts that were already performance-based or changed to be performance-based.
      2. **Exempt Renewed Contracts** - Number of renewed contracts that received an exemption.
2. New Contracts
  - a. **New Contracts** - Number of contracts with start dates on or after 5/1/11, by type of contract, by quarter of start date.
    - i. **Performance-Based New Contracts** - Number of new contracts that are performance-based, by type of contract, by quarter of start date.
    - ii. **Exempt New Contracts** - Number of new contracts that received an exemption, by type of contract, by quarter of start date.
3. Contract Monitoring
  - a. **Completed Performance-Based New Contracts** - Number of new performance-based contracts (started on or after 5/1/11) that were completed, by type of contract, by quarter of contract end date.
    - i. **Completed Performance-Based New Contracts that Met Performance Conditions** - Number of completed performance-based new contracts (started on or after 5/1/11 and now completed), that met the minimum performance requirements of the contract, by type of contract, by quarter of end date.
4. Analysis
  - a. **Analysis** - Short text accompanying and explaining the data on performance-based contracts. Agencies have a lot of flexibility on what information to include. Examples could include:
    - i. Most common reasons for exemptions or barriers to performance-based contracting.
    - ii. Trends in the data and the reasons behind them.
    - iii. Information on building incentives into contracts (e.g. bonuses for performing beyond expectations).
    - iv. Efforts to enhance performance-based contracting (e.g. staff training, strengthening or developing policies on contracting monitoring).
    - v. Examples of the benefits or disadvantages of performance-based contracting (e.g. a contract where built-in performance incentives were effective, or a contract that received an unusually low number of bids because vendors perceived there was too much risk to them because the contract was performance-based).

**See the FAQ for types of contracts excluded from reporting.**

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<sup>1</sup> Contract Type Categories: 1. Purchased Services, 2. Personal Services, 3. Client Services, 4. Public Works/Capital Construction, 5. Other/Misc. See FAQ Question 8 for more info.

## Data on Performance-Based Contracting



## When does all this need to be done by?

Timeline:

March	<ul style="list-style-type: none"> <li>Agencies prepare to start data collection (identify data sources and make modifications if needed, develop internal tracking methods).</li> <li>GMAP and agencies finalize reporting format and process.</li> </ul>
May	<ul style="list-style-type: none"> <li>Agencies begin collecting data for partial FY11 Q4 (May-June 2011).</li> </ul>
July	<ul style="list-style-type: none"> <li>Agencies begin collecting data for FY12 Q1 (July-September 2011).</li> <li>Agencies compile data for FY11 Q4 into standard report format.</li> </ul>
August	<ul style="list-style-type: none"> <li>Agencies send FY11 Q4 report to GMAP.</li> <li>GMAP and agencies revise the reporting process as needed.</li> </ul>
November	<ul style="list-style-type: none"> <li>Agencies send FY12 Q1 report to GMAP.</li> </ul>
December 1	<ul style="list-style-type: none"> <li>GMAP reports to Governor and Leadership Team by December 1, 2011, using at least the FY12 Q1 data.</li> </ul>

After the initial reporting in December, we expect to continue collecting data and reporting on performance-based contracting on a quarterly basis.

## Frequently Asked Questions

### 1. What is the performance-based contracting Executive Order? Where can I find a copy of it?

Through [Executive Order 10-07](#), the Governor directed all state cabinet agencies to:

- Meet performance-based contracting standards in all new contracts for products and services.
- Review existing contracts prior to renewal and update as necessary to reflect these standards.
- Actively manage performance-based contracts to meet performance standards.

In addition, the EO requires the GMAP office to work with agencies to develop performance measures related to performance-based contracting and report to the Governor on the progress made by state agencies in implementing the EO by Dec 1, 2011.

### 2. What is a performance-based contract? How do I tell if a contract is performance-based?

The definition of a performance-based contract used in the EO is quite broad: "Performance-based contracts identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received."

OFM has provided additional resources to assist agencies in performance-based contracting, which are available at [http://www.ofm.wa.gov/contracts/resources/performance\\_based](http://www.ofm.wa.gov/contracts/resources/performance_based).

Agencies will need to use their judgment to determine whether contracts meet the criteria listed in the EO. There are many possible elements that could make a contract performance-based, depending on the type and complexity of the good or service being purchased, and there is no single correct way to make a contract performance-based. For example:

- A simple performance-based contract for a routine good, like a replacement part, could include a clear deliverable and specification (what part is needed, how many, any

quality standards that must be met) and standard contract provisions, such as a basic warranty and payment after delivery.

- A performance-based contract for training might include a list of the knowledge or skills participants should learn (rather than specifying the length or the method of teaching in the training) or include a performance measure that a certain percentage of training participants pass a test at the end of the class to make sure they learned the material.
- An equipment maintenance contract could include performance measures, such as initial incident response time, with a provision for a partial refund if the standards aren't met.
- A multimillion dollar contract to build a public works project might include a more complex set of performance incentives and consequences, such as a bonus for finishing early or meeting higher-than-required environmental standards or a consequence for excessive noise or disruptions to surrounding traffic and buildings.

**3. Do we need to determine whether all of our existing contracts are performance-based?**

No. We're only asking for the number of performance-based contracts that start on or after 5/1/11, or are renewed on or after 5/1/11. We are asking for the total number of contracts that have start dates before 5/1/11 and are still active, but we are not asking whether those contracts are performance-based.

**4. Why are we using 5/1/11 as the date for starting to collect the data, rather than the effective date of the Executive Order?**

Many agencies are not currently set up to track this information and will need time to update databases and reporting tools. We are considering November 29, 2010 to April 30, 2011 the 'implementation phase,' and we are not requiring agencies to go back through the contracts that began during that time and retroactively track data about them.

**5. Who has to report?**

The Executive Order applies to all cabinet agencies. For the purposes of tracking progress, we are only requiring certain agencies to submit data on performance-based contracting. A full list of the agencies expected to report is included at the end of the document. Agencies exempted include education institutions, those that are not part of Executive Cabinet or Small Agency Cabinet, commissions, and agencies with 09-11 expenditure authority under \$12 million.

**6. How are we going to transmit the data to the Governor's Accountability and Performance staff? Will our directors be expected to talk about this in a GMAP forum?**

The details of how the data will get from agencies to the Accountability and Performance staff, and from there to the Governor and senior staff, are still being worked out. There will likely be a standardized template for agencies to submit data and analysis, and the Governor may want to discuss the results at GMAP forums in late 2011 or 2012. We'll have more time to work that out before the first reports are due this summer. Right now, the priority is figuring out what information needs to be collected.

**7. What type of contracts should be included in the reporting?**

For purposes of reporting, all contracts are included unless they are specifically excluded below. The list of contracts excluded from *reporting* is not intended to imply that these contracts are

exempt from the Executive Order. OFM has published a [Q&A](#) to clarify what types of contracts are in the scope of the EO.<sup>2</sup>

Exclusions from reporting:

- Interagency agreements – Agreements between state government agencies do not need to be included.
- Goods – There are several elements of performance-based contracting that are required by state accounting policy and included in all contracts for goods by default, including prohibition of pre-payment, warranties, and inspection clauses. Since all contracts for goods that meet the pre-EO standards would meet the minimum requirements to be considered performance-based, we are not asking agencies to report on these.
- Contracts using federal pass-through funds (optional) – Until OFM and other agencies have completed the review of barriers to using performance-based contracts for federal pass-through programs, agencies may choose to exclude these contracts from reporting. (Note: Either all federal pass-through contracts should be excluded or all should be included. In no case should some be included and some be excluded.) After the review, we will revisit the issue of whether to report on contracts using these funds, so this exclusion is likely temporary. See question 13 for more information on this exclusion.
- Master contracts – Purchases of goods and services through master contracts created by a central purchasing authority (e.g. computer equipment contracts or other IT services created by DIS or office supplies contracts created by GA) should not be included in agencies' data. Note: This exclusion does not include contracts where agencies determine a scope of work and select a contractor through work orders or task orders for their own agency's use, sometimes called second-tier contracts or convenience contracts. Those should be included in the reporting by the agency writing the scope of work (not the one that wrote the contract "shell", if different).
- Non-financial agreements – Agreements for data-sharing, limiting liability, outlining the non-financial responsibilities of a partnership, etc., are excluded from reporting. If there is no payment or transfer of funds from a state agency to an entity outside of state government, the contract should not be included.
- State-provided goods and services – Contracts where the state is the "contractor," providing a good or service for payment to the state agency, should not be included.
- Contracts written by a different agency – The agency with primary responsibility for writing a specific contract should report on it. For example, if GA develops a public works contract on behalf of your agency (the contract is written and monitored by GA), it should be included in GA's reporting. Do not also include that contract in your agency's reporting or it will be double-counted in the statewide aggregate.

If you have a question about whether to include a particular kind of agreement, please contact the Accountability and Performance staff.

**8. What does "type of contract" mean? Are the categories listed in the footnote the only ones we should use? What should go in the "Other/Miscellaneous" category?**

We are asking for a breakdown of many data elements into five broad categories of type of contracts, including "Purchased Services," "Personal Services," "Client Services," "Public Works/Capital Construction," and "Other/Misc." The "Other/Misc." category is for anything that

<sup>2</sup> Available at [http://www.ofm.wa.gov/contracts/resources/performance\\_based/ofm\\_pbc\\_qanda\\_3-22-11.pdf](http://www.ofm.wa.gov/contracts/resources/performance_based/ofm_pbc_qanda_3-22-11.pdf)

doesn't fit into one of the four other categories, such as an architecture and engineering contract.

**9. What do you mean by “renewing” a contract?**

Renewals are when an agency exercises provisions in a contract to extend the contract. See the [Performance-Based Contracting Q&A](#) published by OFM for more guidance on contract renewals.<sup>3</sup>

**10. Is OFM going to update ECMS for agencies to use to track this data?**

Yes. OFM is working to update ECMS by adding the fields needed to track whether a contract is performance-based or exempt, the reason for the exemption if needed, and a way to track whether the performance requirements on a finished contract were met. OFM expects that most changes to ECMS to allow for tracking of performance-based contracts will be completed by April 2011. If you have questions about ECMS, please contact OFM Contracting.

**11. It will take a lot of work to get our IT system ready to track this information. What if it's not done by May 1?**

Based on feedback from agencies, we have decided to delay the start date for data collection until May 1, 2011, in order to give agencies more time to prepare. If your IT system or data collection process is not ready by May 1, then when you are ready to start tracking, you will need to review all contracts or renewals on or after May 1 and retroactively record the data. This must be done in time to report the complete data to the GMAP office in August.

**12. My agency has a lot of contracts that would be very difficult to make performance-based, such as subscriptions that are paid in advance or standard license agreements for software. Can I exclude those from reporting?**

No, these contracts should be included in your reporting. First, remember to review the contracts in question because many standard vendor agreements are actually performance-based. If that is not the case, we recognize that there are some circumstances where it is not cost-effective to use performance-based contracting or where the state would not be able to purchase a particular product without agreeing to a standard set of terms that are not performance-based. That is why agencies are encouraged to develop an exemption process, as allowed by the EO. If you are concerned that your agency will have a high frequency of exemptions for a particular reason or type of contract, it may be helpful to keep track of the most common reasons for exemptions and share them in the analysis you send with the report.

**13. How do we determine whether a particular contract uses “federal pass-through funds” and could be excluded from reporting?**

Not all contracts that are paid for with federal funds are excluded from reporting. Agencies may choose to exclude contracts only when the state is acting as a pass-through entity to distribute federal funds to a subrecipient, in order for the subrecipient to carry out a federal program. If the state receives federal funds to provide a service or carry out a federal program, for which the state has primary responsibility, and the state uses those funds to buy a good or service from a vendor as a tool to help, that contract is not considered “pass-through” and should be included in the reporting.

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<sup>3</sup> Available at [http://www.ofm.wa.gov/contracts/resources/performance\\_based/ofm\\_pbc\\_qanda\\_3-22-11.pdf](http://www.ofm.wa.gov/contracts/resources/performance_based/ofm_pbc_qanda_3-22-11.pdf)

Key Definitions<sup>4</sup>:

- Federal Award - Federal financial assistance and federal cost-reimbursement contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors.
- Pass-Through Entity - A nonfederal entity that provides a federal award to a subrecipient to carry out a federal program.
- Subrecipient - A nonfederal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program.

The key difference between a sub-recipient and a vendor is that sub-recipient activities directly execute the mission, whereas vendors provide products or services that indirectly support the mission. Ultimately, there is some judgment in this determination, but there is guidance available from OMB and OFM.<sup>5</sup>

If a contract is funded in part by federal pass-through funds and in part by state funds, the agency may exclude the contract from reporting.

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<sup>4</sup> OMB Circular A-133 §\_105. Definitions

([http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf))

SAAM Manual 50.30.30 Definitions relating to the Single Audit process (<http://www.ofm.wa.gov/policy/50.htm>)

<sup>5</sup> OMB Circular A-133§\_210 Subrecipient and vendor determinations

([http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf))

SAAM Manual 50.30.60 Pass-through entities must determine subrecipient (subgrantee) vs. Vendor (contractor) determinations (<http://www.ofm.wa.gov/policy/50.htm>)

## Agencies Expected to Report

- Administrative Hearings, Office of
- Agriculture, Department of
- Commerce, Department of
- Community and Technical Colleges, State Board for
- Corrections, Department of
- Early Learning, Department of
- Ecology, Department of
- Employment Security Department
- Financial Institutions, Department of
- Financial Management, Office of
- Fish and Wildlife, Department of
- General Administration, Department of
- Health, Department of
- Health Care Authority
- Higher Education Coordinating Board
- Industrial Insurance Appeals, Board of
- Information Services, Department of
- Labor and Industries, Department of
- Licensing, Department of
- Liquor Control Board
- Military Department
- Parks and Recreation, Department of
- Personnel, Department of
- Printing, Department of
- Puget Sound Partnership
- Recreation and Conservation Office
- Retirement Systems, Department of
- Revenue, Department of
- Services for the Blind, Department of
- Social and Health Services, Department of
- State Lottery
- Transportation, Department of
- Veteran's Affairs, Department of
- Washington State Patrol
- Workforce Training and Education Coordinating Board

## Contact Information

- For questions about the data to be collected or the reporting process, contact Karen Sampson at [karen.sampson@gov.wa.gov](mailto:karen.sampson@gov.wa.gov).
- For questions about Executive Order 10-07, contact OFM Contracting at [OFM.Contracting@ofm.wa.gov](mailto:OFM.Contracting@ofm.wa.gov).